

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MARITEL, INC. and)	WT Docket No. 04-257
)	
MOBEX NETWORK SERVICES, LLC.)	RM-10743
Petitions for Rule Making to Amend the)	
Commission’s Rules to Provide Additional)	<i>Report and Order</i> , 22 FCC Rcd 8971
Flexibility for AMTS and VHF Public Coast)	(Commission 2007) (the “R&O”)
Station Licensees)	

To: Office of the Secretary.
Attention: The Commission

Reply to Opposition to “2011 Petition”:
“Application for Review” or in the Alternative Section 1.41 Request¹

Petitioners hereby reply to the PSI opposition (the “Opposition”) to their “2011 Petition” (the “Petition” or “2011 Petition” herein).

Form

Contrary to the Opposition, the 2011 Petition was properly addressed to the Commission under §1.115(g) since (i) it is a “request for reconsideration” of a decision that was in substance and effect a “ruling which denies an application for review,” and (ii) it meets the criteria in §1.115(g) (1) and (2), and (iii) for reasons in the 2011 Petition. It also is proper for a decision under §1.41 in the alternative.

Reference and Incorporation

Regarding reference and incorporation, see Exhibit 1 hereto that contains an email of Mr. Scot Stone on 4/25/11 stating that Petitioners do not need to repeat matters already in the FCC Order, FCC 11-64, in any new petition. Mr. Stone affirmed that in a more recent similar matter. Mr. Stone’s decision was that in future filings Petitioners would not need to repeat material

¹ The defined terms used herein have the same meaning they had in the 2011 Petition.

(facts, arguments, exhibits, etc.) that is already in the record of that matter, under FCC 11-64. The basis of permissible reference and incorporation is that the items involved are relevant and the reference is clear and the material is readily available. Therefore, Mr. Stone was correct to allow Petitioners to not to repeat, but to refer to material already in that case record. Similarly, in this PSI case Petitioners can reference and incorporate where the material is relevant, it is clearly identified and it is easily accessible. Reference and incorporation clearly promotes judicial efficiency and administrative-proceeding efficiency. In addition, Mr. Stone's advice was on specific major matter that was after Mr. Noel's general advice.

Contrary to the Opposition, reference and incorporation is clearly permitted and in the public interest, and commonly used by the FCC itself. See, e.g., DA 08-495, DA 96-2183, 630 F.3d 1031, 986 F.2d 541. The standard is simple: it is permitted if the referenced material is clearly identified, relevant, and readily available. The Petition's referenced and incorporated materials meet those criteria. In addition, Section 1.49 ("Specifications as to pleadings and documents") subsection 1.49(a) deals with paper filings, but subsection 1.49(e) deals with electronic ULS filings: the Petition was an electronic ULS filing. Section 1.49(e) has no specifications stated, since Section 22.6 does not exist. Thus, there is at this time no FCC rule that could (but would not have to) provide details on specification of pleadings filed electronically as to the criteria for permissible reference and incorporation (among other matters). However, by well-established practice, reflected in the authorities cited above, reference and incorporation as used in the Petition is clearly permissible. In addition, the FCC did not make any determination of the matters PSI suggests, staff email indications notwithstanding (among other reasons, said indications did not contain any Ordering clauses). In addition, the referenced and incorporated materials were clearly and legibly presented.

Tolling: Regarding the issue of tolling, Petitioners maintain that they are correct on that point. However, in any case, Petitioners filed their Petition timely.

Licensee and Licenses Disqualification

Contrary to PSI, the Petition was entirely correct to argue that PSI and its licenses are disqualified because without valid licenses a party is not entitled to any relief based on the licenses, and the subject here is certain flexibility afforded by the R&O (2007). The Petition provided substantial evidence of the invalidity of the PSI licenses due to automatic termination and permanent discontinuance, including, but not limited to, failure to provide overlapping continuity of coverage as required by FCC rules; PSI's failure to file Forms 499-A and report operations and pay associated fees for its AMTS stations for over 11 years; and the fact that the few Forms 499-A PSI managed to file only list California, which must mean, at minimum, it has not been operating any of the FCC licenses it holds outside of California.

Contrary to the Opposition, Petitioners are not simply alleging that they assert there are licensee and licenses disqualifications, but there are facts showing that and those facts show automatic disqualification/termination including failure to meet the requirements of §§ 1.955 and 80.49, and §80.475(a)(1990) for reasons the Petition properly explained, including by reference and incorporation. As the Commission noted in its recent Order to Show Cause, FCC 11-64, released April 19, 2011, automatic termination takes place when the licensee fails to meet requirements of those rules regarding timely construction-coverage or permanent continuance. Similarly, failure to state actual control results in an improper license from the start that is automatic disqualification. As the facts show that failure to state actual control applies to both PSI and MCLM.

Lack of Declaration/Affidavit

The Opposition did not contain a declaration that is required for any pleading in which an opposing party denies facts submitted in a challenged petition under declaration. The Petition contained a proper declaration. For this reason alone, the Opposition is defective since no party authorized by PSI has stepped forward to deny facts under penalty of perjury. That is the nature of PSI: it never specifically asserts any qualifying facts: as to actual construction, the required details of operation,² actual ownership, actual report of constructed stations, and other threshold and qualifying factual disclosures. The Commission should summarily reject this practice of evading factual disclosures in licensing matters and of its officers evading personal responsibility, including in denials of factual showings by Petitioners by not submitting declarations under penalty of perjury. PSI and MCLM cooperate in these and other evasive and misleading practices, and the record shows.

Defective Service

The Opposition had an improper certificate of service. Petitioners served a long list of parties since they were asserting facts and making challenges to the MCLM and PSI AMTS incumbent licenses. The Opposition denies those facts and argues that the licenses are valid. Those are issues in various application proceedings involving the parties that Petitioners served. The Opposition had to but failed to serve all those parties.

Character and Fitness and Relief not Possible

Regarding the Opposition's assertion of imposing conditions on incumbents, incumbents are not entitled to relief (e.g. the *R&O* (2007) grant of certain flexibility) unless they meet the threshold conditions to keep and use their site-based licenses in the first place. The incumbents

² Petitioners have shown in numerous challenge proceedings before the FCC against MCLM that it has failed to comply with the simple factual disclosure requirements to operate and obtain radio frequency protection under §80.385(b)(1), in accordance with the FCC's two Orders, DA 10-664 and DA 09-793.

cannot get relief for something--here, site-based AMTS licenses-- that they do not have, nor are they entitled to argue for relief (rule flexibility) for the licenses.

Conclusion, and Potential Mootness

For the reasons given, the 2011 Petition and the relief it requests should be granted.

However, if the MCLM and other (PSI) site-based AMTS station licenses are recognized as automatically terminated, which Petitioners believe will take place once the FCC staff has sufficient opportunity, in relation to the OSC and other pending matters before the FCC, to tend to a careful review, then this 2001 Petition will be moot.

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Respectfully,

Environmental LLC (formerly known as AMTS Consortium LLC), by

[Filed electronically. Signature on file.]

Warren Havens, President

Verde Systems LLC (formerly known as Telesaurus VPC LLC), by

[Filed electronically. Signature on file.]

Warren Havens, President

Intelligent Transportation & Monitoring Wireless LLC, by

[Filed electronically. Signature on file.]

Warren Havens, President

Telesaurus Holdings GB LLC, by

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Warren Havens, President

V2G LLC, by

[Filed electronically. Signature on file.]

Warren Havens, President

Skybridge Spectrum Foundation, by

[Filed electronically. Signature on file.]

Warren Havens, President

Warren Havens, an Individual

[Filed electronically. Signature on file.]

Warren Havens

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Date: May 4, 2011

Declaration

I, Warren Havens, as President of Petitioners, hereby declare under penalty of perjury that the foregoing Reply was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

/s/ Warren Havens
[Submitted Electronically. Signature on File.]

Warren Havens

May 4, 2011

Certificate of Service

I, Warren C. Havens, certify that I have, on May 4, 2011, caused to be served, by placing into the USPS mail system with first-class postage affixed (with delivery tracking) unless otherwise noted below, a copy of the Reply to the following:³

1. FCC

By ECFS filing:

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Via ECFS

2. Mobex-MCLM & Related (Served Parties)

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Note: the following will be served if, upon final review, Petitioners find under FCC rules and practices, they are parties and should be served. (MCLM-Mobex earlier complained that entities not directly parties to and license application should not be served, for example. Also, the April 1, 2011 email from FCC staff to W. Havens (signer above) and Dennis Brown for MCLM-Mobex took the position that a presentation in a restricted proceeding need only be filed directly on ULS in that

matter to the parties directly involved. Petitioners have a pending request to the FCC Office of General Counsel, David Senzel (copied to Dennis Brown) to clarify that apparent policy.

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³ The mailed copy being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.

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/s/ *[Filed Electronically. Signature on File]*

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